

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROGELIO MAY RUIZ,
Plaintiff,
v.
M. STANE, et al.,
Defendants.

No. 1:22-cv-00236-ADA-HBK (PC)
ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS¹
(ECF Nos. 13, 23)

Plaintiff Rogelio May Ruiz initiated this action as a prisoner proceeding pro se by filing a civil rights complaint under 42 U.S.C. § 1983 on February 22, 2022. (ECF No. 1). The matter was referred to the assigned United States magistrate judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On July 15, 2022, the Magistrate Judge issued findings and recommendations recommending Plaintiff's motion to proceed in forma pauperis be denied because Plaintiff qualifies as a three-striker under 28 U.S.C. § 1915(g) and does not meet the imminent danger exception. (ECF No. 23 at 5–7). Further, the Magistrate Judge recommended dismissal due to Plaintiff's failure to prosecute his case in compliance with court order. (*Id.* at 7).

¹ The Court has issued this Order in large print to accommodate Plaintiff's visual impairment.

1 The findings and recommendations were served on Plaintiff and contained
2 notice that any objections were due within fourteen (14) days of service. (*Id.*) On
3 August 15, 2022, the Court granted Plaintiff an extension of time until September 2,
4 2022, to file objections. (ECF No. 26). Plaintiff filed two untimely motions for
5 appointment of counsel and extension of time which, liberally construed, set forth
6 objections to the Magistrate Judge's findings and recommendations. (*See* ECF
7 Nos. 30, 31).

8 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the Court has
9 conducted a de novo review of this case. Having carefully reviewed the entire file,
10 including Plaintiff's untimely objections, the Court finds the findings and
11 recommendations to be supported by the record and proper analysis.

12 Plaintiff appears to argue that because he has upcoming cataract surgery he is
13 in imminent danger of serious physical injury. (ECF No. 30.) However, no
14 plausible reading of "imminent danger" in 28 U.S.C 1915(g) includes routine,
15 elective surgery meant to improve Plaintiff's health. *See Andrews v.*
16 *Cervantes*, 493 F.3d 1047, 1057 (2007). Plaintiff also appears to dispute the
17 Magistrate Judge's finding that he has three strikes under the PLRA but does not
18 provide any discernible legal basis for his objection. (ECF No. 31); *see* Fed. R.
19 Civ. P. 7 (requiring a movant to "state with particularity the grounds for seeking"
20 relief from the Court).

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

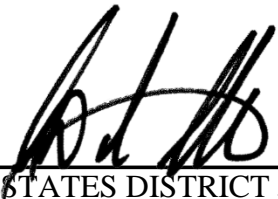
28 ///

Accordingly,

1. The findings and recommendations issued on July 15, 2022 (ECF No. 23), are adopted in full;
2. Plaintiff's application to proceed in forma pauperis (ECF No. 13) is denied;
3. Within thirty (30) days following service of this order, Plaintiff shall pay the \$402.00 filing fee in full to proceed with this action;
4. Failure to pay the required filing fee in full within the specified time will result in the dismissal of this case; and
5. The matter is referred back to the Magistrate Judge for further proceedings.

IT IS SO ORDERED.

Dated: May 6, 2023


UNITED STATES DISTRICT JUDGE